

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

1		)	1:05-cv-00328 OWW SMS
2		)	
3		)	
4		)	
5		)	
6		)	
7		)	
8	ZELLA MAYE FREEMAN,	)	
9	Plaintiff,	)	MEMORANDUM DECISION AND
10	v.	)	ORDER RE DEFENDANTS'
11	CITY OF FRESNO; R. GARRISON	)	MOTIONS TO DISMISS PURSUANT
12	(F.P.D. Badge No. 78); MARK A	)	TO FED. R. CIV. P. 12(b)(6)
13	YEE (F.P.D. Badge No. 692);	)	AND/OR, IN THE ALTERNATIVE,
14	J. CAPRIOLA (F.S.O. Badge No.	)	FOR A MORE DEFINITE
15	7622); I. BARRIMOND (F.S.O.	)	STATEMENT (FED. R. Civ. P.
16	Badge No. 1153); J. HOLLINS	)	12(e).
17	(F.S.O. Badge No. 2346); R.	)	
18	PEREZ (F.S.O. Badge No. 6169);	)	
19	A. SIMONSON (F.S.O. Badge No.	)	
20	9364), inclusive,	)	
21		)	
22		)	
23	Defendants.	)	
24		)	
25		)	
26		)	
27		)	
28		)	

I. INTRODUCTION

Defendants City of Fresno ("City"), R. Garrison ("Officer Garrison"), and Mark A. Yee ("Officer Yee") move to dismiss Zella Maye Freeman's ("Plaintiff") complaint for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6), and in the alternative, for a more definite statement pursuant to Fed. R. Civ. P. 12(e). (Doc. 13, City Defs.' Mem.). Defendants J. Capriola, I. Barrimond, J. Hollins, R. Perez, and A. Simonson

(collectively, "County Defendants" or "County Officers"), move to dismiss Plaintiff's state law claims pursuant to Fed. R. Civ. P. 12(b)(6) and for a more definite statement pursuant to Fed. R. Civ. P. 12(e) as to Plaintiff's claim under Cal. Civ. Code § 43. (Doc. 14, County Defs.' Mem.). Plaintiff opposes the motions. (Doc. 17, Pl.'s Opp. to City; Doc. 18, Pl.'s Opp. to County).

## II. PROCEDURAL HISTORY

This case arises out of an alleged incident that occurred on February 19, 2004, at the residence of Plaintiff, who is a seventy-five-year-old African-American woman. (Doc. 1, Compl. ¶ 3). Plaintiff alleges that police officers belonging to a Multi-Agency Gang Enforcement Consortium ("M.A.G.E.C.") unit used excessive force in entering and searching her home. Plaintiff alleges she was injured by the officers, and that they violated her constitutional rights because of her race and gender. (See *id.*, Ex. A at "Attachment A"). Plaintiff filed her Complaint on March 8, 2005, alleging the Defendant peace officers violated 42 U.S.C. § 1983 protecting her Fourth and Fourteenth Amendment rights against unreasonable search and seizure by state officials. Plaintiff also alleges various "state causes of action" that are grouped together in a single sentence, including violation of Cal. Civ. Code §§ 43 and 52.1, assault, battery, false imprisonment, trespass, and intentional infliction of emotional distress. (*Id.* at ¶ 26).

The City Defendants moved to dismiss all of Plaintiff's claims pursuant to Fed. R. Civ. P. 12(b)(6) on March 30, 2005.

1 (Doc. 13, City's Mem. 4-14). In the alternative, the City  
2 Defendants moved for a more definite statement pursuant to Fed.  
3 R. Civ. P. 12(e). (*Id.* at 14-5). Plaintiff opposed. (Doc. 17,  
4 Pl.'s Opp. to City). The City Defendants replied. (Doc. 19,  
5 City's Reply).

6 On April 4, 2005, the County Defendants moved to dismiss  
7 Plaintiff's state law claims only. (Doc. 14, County's Mem. 2).  
8 The County Defendants also moved for a more definite statement as  
9 to Plaintiff's claim under Cal. Civ. Code §§ 43 and 52.1.  
10 Plaintiff opposed. (Doc. 18, Pl.'s Opp. to County). The County  
11 Defendants did not reply.

12 Oral argument was heard on May 9, 2005. Wesley E. Stupar,  
13 Esq., of Nuttall & Coleman appeared on behalf of Plaintiff.  
14 Harvie Ruth Schreiber, Esq., appeared on behalf of the City  
15 Defendants. James J. Arendt, Esq., of Weakley, Ratcliff, Arendt  
16 & McGuire, LLP, appeared on behalf of the County Defendants.

### 17 18 **III. STATEMENT OF FACTS**

19  
20 Plaintiff alleges that on February 19, 2004, at around noon,  
21 City of Fresno and Fresno County peace officers, who were members  
22 of the M.A.G.E.C. unit, "demanded entry into [her] residence,  
23 threatening to shoot [her] if [she] did not open the door."  
24 (Doc. 1, Compl. Ex. A at "Attachment A"). Plaintiff was  
25 babysitting three children, all under five years of age, at the  
26 time. Plaintiff alleges she suffered injuries, both physical and  
27 mental, as a result of the invasion. Plaintiff alleges the  
28 course of events as follows:

1           9. Defendant R. GARRISON, came to Plaintiff's front  
2 door demanded entry into Plaintiff's residence, and  
3 threatened to shoot Plaintiff if she did not open the door  
4 quickly enough.

5           10. After moving the minor children away from the  
6 door, Plaintiff opened the door under great physical,  
7 emotional, and mental duress.

8           11. Defendant R. GARRISON, and the named FSO Officers,  
9 then invaded Plaintiff's residence, with their weapons  
10 drawn, knocked Plaintiff onto the floor, and hurt Plaintiff.

11           12. Plaintiff was concerned about the safety of the  
12 minor children in her care.

13           13. Defendant R. GARRISON, in callous disregard of the  
14 injuries Plaintiff had sustained, ordered Plaintiff to  
15 quickly stand up, under threat of force. Plaintiff was  
16 unable to stand up on her own.

17           14. Defendant R. GARRISON, and the named FSO Officers,  
18 searched Plaintiff's residence, detained her under threat of  
19 force and seized Plaintiff's son's locked safe, as well as  
20 Plaintiff's registered .32 caliber handgun, which she  
21 lawfully owned.

22           15. Defendant R. GARRISON, and the named FSO Officers,  
23 did not apologize to Plaintiff for committing said acts;  
24 rather, as they were leaving, Defendants sarcastically and  
25 cruelly told Plaintiff to, "Have a good day."

26           16. As a proximate result of said acts, Defendants,  
27 and each of them, caused Plaintiff to suffer significant and  
28 residual pain and injury to her arms, legs, hips and pelvic  
area, and have aggravated Plaintiff's bad heart condition  
and high blood pressure. Plaintiff was denied her  
constitutional, statutory and legal rights as stated below,  
and has suffered significant and residual general and  
special damages, including by [sic] not limited to, severe  
mental and emotional distress, severe concern as to her  
personal safety, false imprisonment, loss of liberty,  
trespass to Plaintiff's residence and possessions, fear,  
humiliation, embarrassment, discomfort, anxiety, medical and  
related expenses of approximately \$5,800, and future medical  
and emotional distress in a sum according to proof.

(Doc. 1, Compl.).

In a statement by Plaintiff she attaches to the Complaint,  
Plaintiff further alleges the officers "trampled over [her]  
legs." (Doc. 1, Compl. Ex. A at "Attachment A;" see also Compl.

¶¶ 9, 13). Plaintiff asserts she believes the officers' actions "were performed...in purposeful discrimination against [her] age, physical ability, gender and race." (*Id.*).

Plaintiff alleges that the officers obtained a search warrant, for which Officer Yee, a City Defendant, was the affiant, but that the search warrant lacked probable cause, was overbroad, and lacked particularity. (*Id.* at ¶ 19). Plaintiff alleges no facts that explains why the search warrant lacked probable cause or the circumstances surrounding the issuance of the warrant.

Plaintiff attaches an "Amended Claim for Damages," dated September 3, 2004 ("Government Tort Claim"), that she filed with the City of Fresno. Attached to the Government Tort Claim is a statement by Plaintiff in support for her claim for damages ("Attachment A") and a "Follow-Up Report" that purportedly relates to the search warrant. Among the defendants named in this lawsuit, the following are listed as "assisting personnel" on the Follow-Up Report: City Defendant R. Garrison, and all County Defendants (i.e., J. Capriola, J. Barriond, J. Hollins, R. Perez, and A. Simonson).

#### IV. LEGAL STANDARDS

##### A. Motion to Dismiss for Failure to State a Claim Pursuant to Fed. R. Civ. P. 12(b)(6).

Fed. R. Civ. P. 12(b)(6) allows a defendant to attack a complaint for failure to state a claim upon which relief can be granted. A motion to dismiss under Fed. R. Civ. P. 12(b)(6) is

1 disfavored and rarely granted: "[a] complaint should not be  
2 dismissed unless it appears beyond doubt that plaintiff can prove  
3 no set of facts in support of his claim which would entitle him  
4 to relief." *Van Buskirk v. CNN, Inc.*, 284 F.3d 977, 980  
5 (9th Cir. 2002) (citations omitted). In deciding whether to  
6 grant a motion to dismiss, the court "accept[s] all factual  
7 allegations of the complaint as true and draw[s] all reasonable  
8 inferences in favor of the nonmoving party." *TwoRivers v. Lewis*,  
9 174 F.3d 987, 991 (9th Cir. 1999).

10 "The court need not, however, accept as true allegations  
11 that contradict matters properly subject to judicial notice or by  
12 exhibit. Nor is the court required to accept as true allegations  
13 that are merely conclusory, unwarranted deductions of fact, or  
14 unreasonable inferences." *Spewell v. Golden State Warriors*,  
15 266 F.3d 979, 988 (9th Cir. 2001) (citations omitted). For  
16 example, matters of public record may be considered under Fed. R.  
17 Evid. 201, including pleadings, orders and other papers filed  
18 with the court or records of administrative bodies. See *Lee v.*  
19 *City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001).  
20 Conclusions of law, conclusory allegations, unreasonable  
21 inferences, or unwarranted deductions of fact need not be  
22 accepted. See *Western Mining Council v. Watt*, 643 F.2d 618, 624  
23 (9th Cir. 1981).

24  
25 B. Motion for a More Definite Statement Pursuant to Fed.  
26 R. Civ. P. 12(e).

27 A motion for a more definite statement pursuant to Fed. R.  
28 Civ. P. 12(e) attacks the unintelligibility of the complaint, not

1 simply the mere lack of detail, and is only proper when a party  
2 is unable to determine how to frame a response to the issues  
3 raised by the complaint. A court will deny the motion where the  
4 complaint is specific enough to apprise the defendant of the  
5 substance of the claim being asserted. *Bureerong v. Uvawas*,  
6 922 F. Supp. 1450, 1461 (C.D. Cal. 1996); see also *Famolare, Inc.*  
7 *v. Edison Bros. Stores, Inc.*, 525 F. Supp. 940, 949 (E.D. Cal.  
8 1981) (finding a Rule 12(e) motion proper "only where the  
9 complaint is so indefinite that the defendant cannot ascertain  
10 the nature of the claim being asserted"). A motion for a more  
11 definite statement is proper only where the complaint is "so  
12 vague or ambiguous that the opposing party cannot respond, even  
13 with a simple denial, in good faith or without prejudice to  
14 himself." *Cellars v. Pacific Coast Packaging, Inc.*, 189 F.R.D.  
15 575, 578 (N.D. Cal. 1999) (internal quotations and citation  
16 omitted); see also *Sagan v. Apple Computer Inc.*, 874 F. Supp.  
17 1072, 1077 (C.D. Cal. 1994) (citing *Van Dyke Ford, Inc. v. Ford*,  
18 399 F. Supp. 277, 284 (E.D. Wis. 1975)) ("A Rule 12(e) motion is  
19 more likely to be granted where the complaint is so general that  
20 ambiguity arises in determining the nature of the claim or the  
21 parties against whom it is being made."); *Boxall v. Sequoia Union*  
22 *High Sch. Dist.*, 464 F. Supp. 1104, 1114 (N.D. Cal. 1979)  
23 (finding a motion for a more definite statement should not be  
24 granted unless the defendant literally cannot frame a responsive  
25 pleading).

26 "Rule 12(e) is designed to strike an unintelligibility  
27 rather than want of detail.... A motion for a more definite  
28 statement should not be used to test an opponent's case by

1 requiring him to allege certain facts or retreat from his  
2 allegations." *Palm Springs Med. Clinic, Inc. v. Desert Hosp.*,  
3 628 F. Supp. 454, 464-65 (C.D. Cal. 1986) (quoting *Juneau Square*  
4 *Corp. v. First Wis. Nat'l Bank*, 60 F.R.D. 46, 48 (E. D. Wis.  
5 1973)). A Rule 12(e) motion "is likely to be denied where the  
6 substance of the claim has been alleged, even though some of the  
7 details are omitted." *Sagan*, 874 F. Supp. at 1077 (citing  
8 *Boxall*, 464 F. Supp. at 1113-14).

9 This liberal standard of pleading is consistent with Fed. R.  
10 Civ. P. 8(a)(2) which allows pleadings that contain a "short and  
11 plain statement of the claim." Both rules assume that the  
12 parties will familiarize themselves with the claims and ultimate  
13 facts through the discovery process. See *Sagan*, 874 F. Supp. at  
14 1077 ("Motions for a more definite statement are viewed with  
15 disfavor and are rarely granted because of the minimal pleading  
16 requirements of the Federal Rules."). If the detail sought by a  
17 motion for a more definite statement is obtainable through  
18 discovery, the motion should be denied. See *McHenry v. Renne*, 84  
19 F.3d 1172, 1176 (9th Cir. 1996) (granting 12(e) motion where  
20 complaint "does not provide defendants with a fair opportunity to  
21 frame a responsive pleading"); see also *Sagan*, 874 F. Supp. at  
22 1077 ("Parties are expected to use discovery, not the pleadings,  
23 to learn the specifics of the claims being asserted."); *Beery v.*  
24 *Hitachi Home Elec. (Amer.), Inc.*, 157 F.R.D. 477, 480 (C.D. Cal.  
25 1993) (finding motion for a more definite statement should be  
26 denied if the detail sought is obtainable through discovery);  
27 *Federal Savings and Loan Ins. Corp. v. Musacchio*, 695 F. Supp.  
28 1053, 1060 (N.D. Cal. 1988) (finding that if plaintiff's



1 complaint meets the notice requirements of Fed. R. Civ. P. 8, and  
2 defendants are provided with a sufficient basis to respond, the  
3 proper avenue for eliciting additional detail is through  
4 discovery); *Famolare, Inc. v. Edison Brothers Stores, Inc.*,  
5 525 F. Supp. 940, 949 (E.D. Cal. 1981) ("A motion for a more  
6 definite statement should not be granted unless the defendant  
7 cannot frame a responsive pleading."); *CMAX, Inc. v. Hall*,  
8 290 F.2d 736, 738 (9th Cir. 1961).

9  
10 **C. Civil Rights Claim under 42 U.S.C. § 1983.**

11 "Section 1983 provides for liability against any person  
12 acting under color of law who deprives another 'of any rights,  
13 privileges, or immunities secured by the Constitution and laws'  
14 of the United States."<sup>1</sup> *S. Cal. Gas Co. v. City of Santa Ana*,  
15 336 F.3d 885, 887 (9th Cir. 2003) (quoting 42 U.S.C. § 1983).

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16  
17 <sup>1</sup> Specifically, 42 U.S.C. § 1983 provides:

18 Every person who, under color of any statute,  
19 ordinance, regulation, custom, or usage, of any State  
20 or Territory or the District of Columbia, subjects, or  
21 causes to be subjected, any citizen of the United  
22 States or other person within the jurisdiction thereof  
23 to the deprivation of any rights, privileges, or  
24 immunities secured by the Constitution and laws, shall  
25 be liable to the party injured in an action at law,  
26 suit in equity, or other proper proceeding for redress,  
27 except that in any action brought against a judicial  
28 officer for an act or omission taken in such officer's  
judicial capacity, injunctive relief shall not be  
granted unless a declaratory decree was violated or  
declaratory relief was unavailable. For the purposes of  
this section, any Act of Congress applicable  
exclusively to the District of Columbia shall be  
considered to be a statute of the District of Columbia.

1                   **1.     Suits Against Local Governments: The *Monell***  
2                   **Doctrines.**

3           Local governments are "persons" subject to suit for  
4 "constitutional tort[s]" under 42 U.S.C. § 1983.<sup>2</sup> *Haugen v.*  
5 *Brosseau*, 339 F.3d 857, 874 (9th Cir. 2003) (citing *Monell v.*  
6 *Dep't of Soc. Servs.*, 436 U.S. 658, 691 n. 55 (1978)). "[T]he  
7 legislative history of the Civil Rights Act of 1871 compels the  
8 conclusion that Congress did intend municipalities and other  
9 local government units to be included among those persons to whom  
10 § 1983 applies." *Monell*, 436 U.S. at 690. Local governments can  
11 be sued for monetary, declaratory, or injunctive relief where  
12 such suits arise out of unconstitutional actions that implement  
13 or execute a "policy statement, ordinance, or decision officially  
14 adopted and promulgated by that body's officers...." *Id.* 690-1.  
15 If no official policy exists, "customs and usages" may fulfill  
16 this element of a § 1983 claim against a local government. *Id.*

17           A local government's liability is limited, however.  
18 Although a local government can be held liable for its official  
19 policies or customs, it will not be held liable for an employee's  
20 actions outside of the scope of these policies or customs. "A  
21 municipality cannot be held liable solely because it employs a  
22

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23           <sup>2</sup> "There is certainly no constitutional impediment to  
24 municipal liability. 'The Tenth Amendment's reservation of  
25 nondelegated powers to the States is not implicated by a  
26 federal-court judgment enforcing the express prohibitions of  
27 unlawful state conduct enacted by the Fourteenth Amendment.'" *Monell*, 436 U.S. 691 (quoting *Milliken v. Bradley*, 433 U.S. 267,  
28 291 (1977)). There is no "basis for concluding that the Eleventh  
Amendment is a bar to municipal liability." *Id.* (citing  
*Fitzpatrick v. Bitzer*, 427 U.S. 445, 456 (1976); *Lincoln County*  
*v. Luning*, 133 U.S. 529, 530 (1890)).

1 tortfeasor -- or, in other words, a municipality cannot be held  
2 liable under § 1983 on a *respondeat superior* theory." *Monell*,  
3 436 U.S. at 691. "A local government may not be sued under  
4 § 1983 for an injury inflicted solely by its employees or agents.  
5 Instead, it is when execution of a government's policy or custom,  
6 whether made by its law-makers or by those whose edicts or acts  
7 may fairly be said to represent official policy, inflicts the  
8 injury that the government as an entity is responsible under  
9 § 1983." *Id.* at 694.

10 To prevail on a § 1983 complaint against a local government  
11 under *Monell*, a plaintiff must satisfy a three-part test:

- 12 (1) The local government official(s) must have  
13 intentionally violated the plaintiff's constitutional  
14 rights;
- 15 (2) The violation must be a part of policy or custom and  
16 may not be an isolated incident; and
- 17 (3) A nexus must link the specific policy or custom to the  
18 plaintiff's injury.

19 *See Monell*, 436 U.S. at 690-92.

## 20 21 **2. Suits Against Governmental Officials**

### 22 **(a) Official-Capacity Suits**

23 "[Section] 1983 claims against government officials in their  
24 official capacities are really suits against the governmental  
25 employer because the employer must pay any damages awarded."  
26 *Butler v. Elle*, 281 F.3d 1014, 1023 (9th Cir. 2002) (citing  
27 *Ky. v. Graham*, 473 U.S. 159, 165-66 (1985)); *see also Doe v.*  
28 *Lawrence Livermore Nat'l Lab.*, 131 F.3d 836, 839 (9th Cir. 1997)

1 (finding that "a suit against a state official in his official  
2 capacity is no different from a suit against the [official's  
3 office or the] State itself") (citing *Will v. Mich. Dep't of*  
4 *State Police*, 491 U.S. 58, 70-71 (1989)). "As the Supreme Court  
5 has stated, 'official-capacity suits...generally represent only  
6 another way of pleading an action against an entity of which an  
7 officer is an agent.'" *Ruvalcaba v. City of Los Angeles*,  
8 167 F.3d 514, 524 n.3 (9th Cir. 1999) (quoting *Graham*, 473 U.S.  
9 at 165). "'As long as the government entity receives notice and  
10 an opportunity to respond, an official-capacity suit is, in all  
11 respects other than name, to be treated as a suit against the  
12 entity.'" *Ruvalcaba*, 167 F.3d at 524 n.3 (quoting *Graham*,  
13 473 U.S. at 166.).

14  
15 **(b) Personal-Capacity Suits**

16 "'Personal-capacity suits seek to impose personal liability  
17 upon a government official for actions he takes under color of  
18 state law.'" *Dittman v. Cal.*, 191 F.3d 1020, 1027 (9th Cir.  
19 1999) (quoting *Graham*, 473 U.S. at 165); *see also Hafer v. Melo*,  
20 502 U.S. 21, 25 (1991) (finding that "[p]ersonal capacity suits  
21 seek to impose liability on state officials for acts taken under  
22 color of state law"); *Stivers v. Pierce*, 71 F.3d 732, 749 (9th  
23 Cir. 1995). In setting forth the distinctions between personal  
24 and official capacity suits, the Supreme Court said:

25 Personal-capacity suits seek to impose personal  
26 liability upon a government official for actions he  
27 takes under color of state law. *See, e.g., Scheuer*  
28 *v. Rhodes*, 416 U.S. 232, 237-238 (1974).  
Official-capacity suits, in contrast, "generally  
represent only another way of pleading an action  
against an entity of which an officer is an agent."

1        *Monell*[], 436 U.S. at 690, n. 55 []. As long as the  
2        government entity receives notice and an opportunity  
3        to respond, an official-capacity suit is, in all  
4        respects other than name, to be treated as a suit  
5        against the entity. *Brandon*, 469 U.S., at 471-472.  
6        It is not a suit against the official personally, for  
7        the real party in interest is the entity. Thus,  
8        while an award of damages against an official in his  
9        personal capacity can be executed only against the  
10       official's personal assets, a plaintiff seeking to  
11       recover on a damages judgment in an official-capacity  
12       suit must look to the government entity itself.

13       *Graham*, 473 U.S. 159, 166 (1985).

14       "While the plaintiff in a personal-capacity suit need not  
15       establish a connection to governmental 'policy or custom,'  
16       officials sued in their personal capacities, unlike those sued in  
17       their official capacities, may assert personal immunity defenses  
18       such as objectively reasonable reliance on existing law."<sup>3</sup> *Pena*  
19       *v. Gardner*, 976 F.2d 469, 473 (9th Cir. 1992) (quoting *Graham*,  
20       473 U.S. at 166-167). Individuals are not immune under the  
21       doctrine of qualified immunity if they violated "clearly  
22       \_\_\_\_\_

23       <sup>3</sup> Immunity is not absolute, as the Ninth Circuit has  
24       explained:

25       This court has held that, when a public official acts  
26       in reliance on a duly enacted statute or ordinance,  
27       that official ordinarily is entitled to qualified  
28       immunity. See *Grossman v. City of Portland*, 33 F.3d  
1200, 1210 (9th Cir. 1994) (holding that "an officer  
who reasonably relies on the legislature's  
determination that a statute is constitutional should  
be shielded from personal liability"). The existence  
of an authorizing statute is not dispositive,  
however. Qualified immunity does not extend to a  
public official who enforces a statute that is  
"patently violative of fundamental constitutional  
principles." *Id.* at 1209.

29       *Dittman*, 191 F.3d at 1027.

1 established statutory or constitutional rights of which a  
2 reasonable person would have known." *Harlow v. Fitzgerald*,  
3 457 U.S. 800, 818 (1982). "A victory in such a suit is a  
4 'victory against the individual defendant, rather than against  
5 the entity that employs him.'" *Cerrato v. San Francisco*  
6 *Community College Dist.*, 26 F.3d 968, 973 (9th Cir. 1994)  
7 (quoting *Graham*, 473 U.S. at 166-67).  
8

9 **D. State Law Claims Against Public Entities and the**  
10 **California Tort Claims Act.**

11 Plaintiff brings the following state law claims against  
12 Defendants: violation of her statutory civil rights under Cal.  
13 Civ. Code § 43 and 52.1, assault, battery, false imprisonment,  
14 trespass, and intentional infliction of emotional distress. The  
15 California Tort Claims Act governs tort claims against public  
16 entities and their officials. See Cal. Gov. Code § 810 et seq.  
17 The California Tort Claims Act ("CTCA") requires plaintiffs to  
18 present a written claim to the public entity allegedly  
19 responsible for their damage before initiating suit on the cause  
20 of action. Cal. Gov. Code § 945.6.

21 Under the California Tort Claims Act, no suit for "money or  
22 damages" may be brought against a public entity until a written  
23 claim has been presented to the public entity and the claim  
24 either has been acted upon or is deemed to have been rejected.  
25 *Hart v. Alameda County*, 76 Cal. App. 4th 766, 778 (Cal. Ct. App.  
26 1999). The CTCA requires a plaintiff to file a timely tort claim  
27 with the public entity; if the claim is not timely, the public  
28 entity may reject the claim.

1 If a claimant fails to timely file a claim with the public  
2 entity, and its claim is consequently rejected by the public  
3 entity for that reason, courts are without jurisdiction to hear  
4 the claimant's cause of action. *Greyhound Lines, Inc. v. County*  
5 *of Santa Clara*, 187 Cal. App. 3d 480, 487 (1986); *Moyer v. Hook*,  
6 10 Cal. App. 3d 491, 492-3 (Cal. Ct. App. 1970); *Carr v. State of*  
7 *Cal.*, 58 Cal. App. 3d 139, 144-6 (Cal. Ct. App. 1976); *Williams*  
8 *v. Mariposa County Unified Sch. Dist.*, 82 Cal. App. 3d 843, 848-9  
9 (Cal. Ct. App. 1978). For causes of action for death, personal  
10 injury, or injury to personal property, a claimant must file a  
11 claim within six months of the accrual of the cause of action.  
12 Cal. Gov. Code § 911.2.

13 The CTCA also permits the filing of an application to file a  
14 late claim for certain claims: "[w]hen a claim that is required  
15 by Section 911.2 to be presented not later than six months after  
16 the accrual of the cause of action is not presented within that  
17 time, a written application may be made to the public entity for  
18 leave to present that claim." Cal. Gov. Code § 911.4. The  
19 CTCA's six-month limitations period applies to causes of action  
20 for death, personal injury, or injury to personal property. *Id.*  
21 at § 911.2. If a claimant fails to timely file a petition to  
22 file a late claim, courts are without jurisdiction to hear the  
23 cause of action.

24 The overall policy of the claim requirements and time  
25 limitations of the California Tort Claims Act are to: (1) "give  
26 the governmental entity an opportunity to settle just claims  
27 before suit is brought;" (2) "permit the entity to make an early  
28 investigation of the facts on which a claim is based, thus

enabling it to defend itself against unjust claims and to correct the conditions or practices which gave rise to the claim;" and (3) "avoid multiple suits arising out of the same transaction or occurrence and thus further[] the goal of judicial economy." *Greyhound Lines*, 187 Cal. App. 3d at 487 (quoting *Gehman v. Super. Ct.*, 96 Cal. App. 3d 257, 262, 265 (Cal. Ct. App. 1979), disapproved on other grounds by *Dept. of Transportation v. Super. Ct.* ("Frost"), 26 Cal.3d 744, 759 n. 5 (1980)).

## V. ANALYSIS

### A. The City Defendants' Motion to Dismiss Plaintiff's § 1983 Claims.

The City Defendants move to dismiss Plaintiff's § 1983 claims pursuant to Fed. R. Civ. P. 12(b)(6). First, the City argues that Plaintiff fails to state a *Monell* claim against the City. Second, the City argues (a) that Plaintiff's § 1983 claim against Officer Yee should be dismissed for failure to meet pleading requirements for claims alleging lack of probable cause in obtaining a search warrant; and (b) Officer Garrison should be dismissed based on qualified immunity. Third, the City argues that Plaintiff fails to state a § 1983 claim because she fails to allege "in specific terms how each named defendant is involved, and how each named Plaintiff has been harmed." (Doc. 13, Pl.'s Opp. to City 13).

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1           **1.   Whether Plaintiff states a *Monell* claim against**  
2           **the City.**

3           The City Defendants argue that Plaintiff fails to state a  
4 *Monell* claim against the City. The City argues that Plaintiff  
5 fails to plead the existence of a policy or custom, and that  
6 Plaintiff was injured as a result of implementation of that  
7 custom.

8           Local governments are "persons" subject to suit for  
9 "constitutional tort[s]" under 42 U.S.C. § 1983. *Haugen*,  
10 339 F.3d at 854. The City, as a local government, is therefore  
11 subject to suit under § 1983. However, local governments can  
12 only be sued where the claims arise out of unconstitutional  
13 actions by their employees that implement or execute a "policy  
14 statement, ordinance, or decision officially adopted and  
15 promulgated by that body's officers...." *Monell*, 436 U.S. at  
16 690-1. Plaintiff here fails to allege that her constitutional  
17 rights were violated by the implementation of a policy or custom.  
18 Plaintiff argues in her opposition brief only that "[i]t is  
19 believed that discovery will support, among others, that the CITY  
20 OF FRESNO, had a long-standing practice of negligently training  
21 and supervising its officers who were assigned to the MAGEC  
22 unit." (Doc. 17, Pl.'s City Opp. 4). Because Plaintiff does not  
23 allege in her complaint that she was injured by implementation of  
24 this purported "long-standing practice," however, her argument  
25 fails.<sup>4</sup>

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27           <sup>4</sup> The City also argues that it cannot be held liable under  
28 § 1983 on a *respondeat superior* theory. The City's argument  
regarding *respondeat superior* is conceptually indistinguishable

1 Defendant City's Motion to Dismiss Plaintiff's § 1983 claim  
2 against Defendant City is **GRANTED** with leave to amend.

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4 **2. Whether Plaintiff's § 1983 Claim Against**  
5 **Defendants Garrison and Yee Should Be Dismissed.**

6 The City Defendants first argue that Plaintiff fails to  
7 state a claim against Officer Yee because Plaintiff fails to meet  
8 the heightened pleading standard purportedly required for claims  
9 under § 1983 based on constitutional torts with a necessary  
10 element of wrongful motive, including where the plaintiff alleges  
11 lack of probable cause in issuing a search warrant, as here. The  
12 City Defendants also argue Plaintiff fails to state a § 1983  
13 claim against Officer Yee because Plaintiff fails to allege  
14 sufficient facts regarding the issuance of the search warrant as  
15 required under *Franks v. Delaware*, 438 U.S. 154 (1978). The City  
16 next argues that Plaintiff fails to state a § 1983 claim against  
17 Officer Garrison because, based on the facts alleged in the  
18 Complaint, he is entitled to qualified immunity.

19  
20 **(a) Heightened Pleading Standard.**

21 The City Defendants argue that Plaintiff's § 1983 claim  
22 against Officer Yee for obtaining a search warrant without  
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25 from its argument regarding Plaintiff's failure to plead a proper  
26 *Monell* claim and will not be considered separately. See *Monell*  
27 436 U.S. at 691 (noting that although a local government can be  
28 held liable for implementation of its official policies or  
customs, it cannot be held liable for an employee's actions  
outside the scope of these policies or customs on *respondeat*  
*superior* theory).

1 probable cause should be dismissed because Plaintiff fails to  
2 meet the heightened pleading standard that purportedly applies in  
3 cases in which subjective intent is an element of the  
4 constitutional tort action. Such actions include those where the  
5 plaintiff alleges the affiant officer obtained the search warrant  
6 without probable cause. Plaintiff appears to make such an  
7 allegation against Officer Yee. The City cites *Branch v.*  
8 *Tunnell*, 937 F.2d 1382, 1386 (9th Cir. 1991), to support its  
9 argument that the Ninth Circuit "established a heightened  
10 pleading standard for a plaintiff to establish that the Defendant  
11 knowingly or recklessly misled the magistrate" who issued the  
12 search warrant. (Doc. 13, City's Mem. 7-8). *Branch v. Tunnell*,  
13 however, has been overruled and is no longer good law. *Galbraith*  
14 *v. County of Santa Clara*, 307 F.3d 1119 (9th Cir. 2002); see also  
15 *Porter v. Jones*, 319 F.3d 483, 495 (9th Cir. 2003) ("In  
16 *Galbraith*, we overruled *Branch* on the basis of intervening  
17 Supreme Court precedent. [citation] Heightened pleading standards  
18 no longer apply to constitutional claims involving improper  
19 motives."); *Morgan v. United States*, 323 F.3d 776, 780 (9th Cir.  
20 2003). The City has been previously warned not to mis-cite and  
21 misrepresent the law.

22 *Galbraith* held that a heightened pleading standard is not  
23 required for § 1983 claims where the underlying constitutional  
24 tort action involves improper motive, including when a plaintiff  
25 alleges the affiant officer misled the magistrate. 307 F.3d at  
26 1125-6. The court held that only a short and plain statement  
27 showing that the pleader is entitled to relief is required for  
28 § 1983 claims, as stated in Federal Rule of Civil Procedure

1 8(a)(2). The only exception is that when fraud or mistake is  
2 alleged, a heightened pleading standard is required Federal Rule  
3 of Civil Procedure 9(b). *Id.* (citing *Crawford-El v. Britton*, 523  
4 U.S. 574 (1998); *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506  
5 (2002)).

6 The City's Motion to Dismiss Plaintiff's § 1983 claim  
7 against Officer Yee on heightened pleading grounds is **DENIED**.

8  
9 **(b) Whether Plaintiff States a § 1983 Claim Against**  
10 **Officer Yee under *Franks v. Delaware*.**

11 The City Defendants argue that Plaintiff fails to adequately  
12 state a § 1983 claim against Officer Yee as required by *Franks v.*  
13 *Delaware*, 438 U.S. 154 (1975). The City Defendants appear to  
14 confuse this argument with their argument that a heightened  
15 pleading standard is required for claims alleging lack of  
16 probable cause in obtaining a search warrant.

17 *Franks* requires a plaintiff who is claiming violation of  
18 § 1983 for unlawful search based on lack of probable cause to  
19 allege facts supporting an allegation of fraud or  
20 misrepresentation by the affiant officer in obtaining the warrant  
21 from the magistrate. More specifically, *Franks* holds that, where  
22 a substantial preliminary showing is made that "a false statement  
23 knowingly and intentionally, or with reckless disregard for the  
24 truth, was included by the affiant in the warrant affidavit, and  
25 if the allegedly false statement is necessary to the finding of  
26 probable cause, the Fourth Amendment requires that a hearing be  
27 held at the defendant's request." *Id.* at 155-6. Although the  
28 issue in *Franks* dealt with circumstances under which an

1 evidentiary hearing may be required and did not directly address  
2 the issue of sufficiency of pleading, its holding affects  
3 pleading requirements for civil rights actions against officers  
4 who are alleged to have obtained a search warrant without  
5 probable cause. The Court found that there is "a presumption of  
6 validity with respect to the search warrant," and that therefore,  
7 "[t]o mandate an evidentiary hearing, **the challenger's attack**  
8 **must be more than conclusory....**" *Id.* at 171 (emphasis added).

9 Furthermore:

10       There must be allegations of deliberate falsehood or of  
11       reckless disregard for the truth, and those allegations must  
12       be accompanied by an offer of proof. They should point out  
13       specifically the portion of the warrant affidavit that is  
14       claimed to be false; and they should be accompanied by a  
15       statement of supporting reasons.

16 *Id.*

17       Here, Plaintiff alleges no more than a conclusory statement  
18       that the search warrant, issued based on Officer Yee's affidavit,  
19       lacked probable cause. Not only does Plaintiff allege no facts  
20       regarding the circumstances surrounding the issuance of the  
21       warrant, Plaintiff alleges no fraud or misconduct by Officer Yee.  
22       (See Doc. 1, Compl. ¶ 19). Also, Plaintiff's complaint fails to  
23       "point out specifically the portion of the warrant affidavit that  
24       is claimed to be false," as required by *Franks*.

25       The City Defendants' Motion to Dismiss Plaintiff's § 1983  
26       claim against Officer Yee for failure to meet pleading  
27       requirements under *Franks* is **GRANTED** with leave to amend.

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**(c) Whether Officer Garrison is Entitled to Qualified Immunity.**

The City Defendants next argue that Plaintiff's § 1983 claim against Officer Garrison should be dismissed because Officer Garrison is entitled to qualified immunity based on the facts alleged in Plaintiff's Complaint. Individuals are not immune under the doctrine of qualified immunity if they violated "clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow*, 457 U.S. at 818. The City Defendants argue that the alleged actions of Garrison were reasonable (thus entitling him to qualified immunity) by virtue of the fact that he was acting pursuant to a search warrant issued to investigate gang-related activity.

When considering a Rule 12(b)(6) motion to dismiss, allegations in the pleadings are construed in a light most favorable to the Plaintiff. Defendant Garrison cannot establish that he has qualified immunity based on Plaintiff's allegations here. It is not clear from Plaintiff's allegations that Officer Garrison did not violate clearly established constitutional rights or acted reasonably under the totality of the circumstances. Plaintiff alleges that Garrison (with the other Defendant officers) threatened to shoot Plaintiff (a seventy-five-year-old woman) if she did not open the door; knocked Plaintiff to the floor; trampled and injured her; and then ordered Plaintiff to stand up when she was not able to do so on her own. These allegations overcome Garrison's claim of qualified immunity because, as alleged, such actions were not

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1 reasonable under the totality of the circumstances.<sup>5</sup>

2       Officer Garrison cannot establish qualified immunity based  
3 on the facts Plaintiff alleges. The City's Motion to Dismiss  
4 Plaintiff's § 1983 claim against Officer Garrison on the grounds  
5 of qualified immunity is **DENIED**.

6  
7               **3. Whether Plaintiff Fails to State a § 1983 Claim**  
8               **Against Officers Garrison and Yee because She**  
9               **Fails to Identify the Harm Caused by Each**  
              **Defendant.**

10       The City Defendants next argue that Plaintiff fails to state  
11 a § 1983 claim against Officers Garrison and Yee because she  
12 fails to allege in specific terms how each named defendant is  
13 involved and precisely how Plaintiff was harmed by each.  
14 (Doc. 13, City's Mem. 13).

15       Fed. R. Civ. P. 8(a)(2) requires that pleadings contain a  
16 "short and plain statement of the facts." While there is no  
17 heightened pleading standard for civil rights actions, unless  
18 fraud or mistake is alleged (see Fed. R. Civ. P. 9(b)), a  
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21       <sup>5</sup> In support of its argument, the City cites and quotes  
22 extensively from a recently-decided United States Supreme Court  
23 case, *Muehler v. Mena*, 125 S.Ct. 1465 (2005). *Muehler* held that  
24 officers executing a search warrant seeking weapons and evidence  
25 of gang membership acted reasonably in (1) detaining the occupant  
26 for 2-3 hours while conducting the search and (2) exercising  
27 reasonable force to effect the detention. *Id.* at 1470. *Muehler*,  
28 however, does not help the City's argument. *Muehler* did not hold  
the officers were entitled to qualified immunity at the pleading  
stage; instead *Muehler* was an appeal from a jury verdict.  
Furthermore, the *Muehler* court focused on the Defendant officers'  
detention of the Plaintiff by placing her in handcuffs; there  
were no allegations or evidence that the Plaintiff was trampled,  
as is alleged here.

1 complaint must nevertheless allege sufficient facts from which  
2 notice can be gleaned by each party. In order to state a claim  
3 for relief under 42 U.S.C. § 1983, Plaintiffs must link each  
4 named Defendant with some affirmative act or omission that  
5 demonstrates a violation of Plaintiff's federal rights. Although  
6 federal pleading standards are broad, some facts must be alleged  
7 to support claims under § 1983. See *Leatherman v. Tarrant County*  
8 *Narcotics Unit*, 507 U.S. 163, 168 (1993). In short, the  
9 allegations must enable the responding party to frame a response.

10 Here, Plaintiff has not alleged any facts specific to each  
11 defendant, with the exception of Garrison, whom she alleges  
12 threatened to shoot her if she did not open the door (Compl. ¶ 9)  
13 and ordered her to stand up when she was physically unable to do  
14 so (*id.* at ¶ 13). Although these allegations are sufficient for  
15 Garrison to frame a response, some of the paragraphs in the  
16 Complaint describing the incident remain ambiguous. It is not  
17 clear, for example, whether it was Garrison or one of the County  
18 Officers who knocked Plaintiff down. (Compl. ¶ 11 ("Defendant  
19 R. Garrison, and the named FSO Officcers, then invaded  
20 Plaintiff's residence, with their weapons drawn, knocked  
21 Plaintiff onto the floor, and hurt Plaintiff.")). In addition,  
22 Plaintiff alleges no facts as to the actions of each of the  
23 individual County Defendants.

24 Plaintiff's Complaint fails to allege a "short and plain  
25 statement of the facts," as required by Fed. R. Civ. P. 8(a)(2)  
26 and instead makes conclusory allegations with a few facts that  
27 are not all attributable to a particular defendant. A Plaintiff  
28 must allege some facts to support a claim under § 1983. The



1 complaint does not provide sufficient notice and does not enable  
2 each defendant (including the County Defendants) to frame a  
3 response.

4 The City's motion to dismiss Plaintiff's § 1983 claim  
5 pursuant to Fed. R. Civ. P. 12(b)(6) on the grounds that  
6 Plaintiff failed to plead specific acts as to each Defendant is  
7 **GRANTED** with leave to amend.

8  
9 **B. Defendants' Motions to Dismiss Plaintiff's State Law**  
10 **Claims.**

11 Plaintiff alleges the following state law claims against all  
12 defendants: violation of her statutory civil rights under  
13 Cal. Civ. Code § 43 and 52.1, assault, battery, false  
14 imprisonment, trespass, and intentional infliction of emotional  
15 distress. (Doc. 1, Compl. ¶ 26). The City Defendants and County  
16 Defendants move to dismiss Plaintiff's state law claims.

17 The City Defendants move to dismiss the state law claims on  
18 four grounds. First, the City Defendants argue that Plaintiff's  
19 state law claims against the City should be dismissed because  
20 those claims are based on negligence and no cause of action based  
21 on negligence can be maintained against a public entity, unless a  
22 duty is specifically created by statute. (Doc. 13, City's Mem.  
23 4-5). Second, the City Defendants argue that all tort claims  
24 against Officer Yee should be dismissed because Plaintiff failed  
25 to name Yee in her September 3, 2004, Government Tort Claim  
26 against the City pursuant to the California Tort Claims Act  
27 (Cal. Gov. Code § 945.4). (*Id.* at 5). Third, the City  
28 Defendants argue that Plaintiff's Government Tort Claim does not

1 address the defective search warrant, and Plaintiff cannot now  
2 bring tort claims against Yee that arise out of the allegedly  
3 defective warrant. (*Id.*). Plaintiff offers no substantive  
4 response to these arguments, and argues only that:

5       Plaintiff believes that her Complaint sufficiently states  
6       the elements of each alleged cause of action, and  
7       sufficiently describes the Defendants and the part which  
8       each defendant played with respect to those causes of  
9       action.

10 (Doc. 17, Pl.'s Opp. to City 4).

11       The County Defendants move to dismiss on the sole basis that  
12 Plaintiff's state law claims are barred by the California Tort  
13 Claims Act (Cal. Gov. Code §§ 905, 905.2, 945.4) for failure to  
14 file a timely government tort claim with the County of Fresno.  
15 Plaintiff concedes that her state law claims are time-barred as  
16 to the County Defendants only.

17                   **1.    City Defendants' Motion to Dismiss Plaintiff's  
18                   State Law Claims.**

19       First, the City Defendants argue that no common law  
20 negligence claim can be maintained against a public entity absent  
21 a statute establishing a duty. The California Tort Claims Act  
22 governs the liability of state and local governmental entities  
23 for tort claims. See Cal. Gov. Code § 810 *et seq*; see also  
24 *Eastburn v. Regional Fire Protection Authority*, 31 Cal.4th 1175,  
25 1183 (2003) ("[D]irect tort liability of public entities must be  
26 based on a specific statute declaring them to be liable, or at  
27 least creating some specific duty of care...."). Section 815 of  
28 the California Government Code provides that a public entity is  
not liable for injury arising out of an act or omission except as

1 provided by statute. Plaintiff has not alleged an independent  
2 statutory basis for imposing on the City liability for  
3 Plaintiff's state negligence claims, as required by California  
4 law. Plaintiff also does not identify any statutory basis in its  
5 brief.

6 The City Defendants' Motion to Dismiss Plaintiff's state law  
7 claims as to the City on sovereign immunity grounds is **GRANTED**  
8 with leave to amend.

9  
10 Second, the City Defendants argue that all tort claims  
11 against Officer Yee should be dismissed because Plaintiff failed  
12 to name Officer Yee in her Government Tort Claim brought pursuant  
13 to the California Tort Claims Act. Plaintiff's Government Tort  
14 Claim is attached to her Complaint as Exhibit A. California law  
15 provides that no suit based in tort may be brought against a  
16 public entity until a written claim has been presented to the  
17 public entity and the claim either has been acted on or rejected.  
18 *Hart*, 76 Cal. App. 4th at 778. The California Tort Claims Act  
19 further provides that courts are without jurisdiction to hear a  
20 plaintiff's cause of action against a public entity if the  
21 plaintiff failed to timely file a claim pursuant to the Act.  
22 *Greyhound Lines*, 187 Cal. App. 3d at 487.

23 Plaintiff filed a timely claim with the City of Fresno  
24 pursuant to this requirement. However, Officer Yee is not named  
25 in the claim. Section 910 of the California Government Code  
26 provides the requirements for a claim presented to a local entity

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1 pursuant to the California Tort Claims Act.<sup>6</sup> Among the  
2 requirements is to include the "name or names of the public  
3 employee or employees causing injury, damage, or loss, if known."  
4 Cal. Gov. Code § 910(e). California courts employ two tests to  
5 determine the sufficiency of a claim presented to a governmental  
6 entity. *City of San Jose v. Super. Ct. of Santa Clara County*, 12  
7 Cal.3d 447, 456-7 (1974). Where there has been some compliance  
8 with all the required elements, but the compliance has been  
9 defective, courts employ the substantial compliance test. *Id.* at

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11 <sup>6</sup> Section 910 provides:

12 A claim shall be presented by the claimant or by a  
13 person acting on his or her behalf and shall show all  
14 of the following:

- 15 (a) The name and post office address of the claimant.
- 16 (b) The post office address to which the person  
17 presenting the claim desires notices to be sent.
- 18 (c) The date, place, and other circumstances of the  
19 occurrence or transaction which gave rise to the  
20 claim asserted.
- 21 (d) A general description of the indebtedness,  
22 obligation, injury, damage or loss incurred so far  
23 as it may be known at the time of presentation of  
24 the claim.
- 25 (e) The name or names of the public employee or  
26 employees causing the injury, damage, or loss, if  
27 known.
- 28 (f) The amount claimed if it totals less than ten  
thousand dollars (\$10,000) as the date of  
presentation of the claim, including the estimated  
amount of any prospective injury, damage, or loss,  
insofar as it may be known at the time of the  
presentation of the claim, together with the basis  
of computation of the amount claimed. If the  
amount claimed exceeds ten thousand dollars  
(\$10,000), no dollar amount shall be included in  
the claim. However, it shall indicate whether the  
claim would be a limited civil case.

1 456. Where there has been a failure to comply entirely with a  
2 particular statutory requirement, a more stringent standard is  
3 applied. *Id.* ("'[S]ubstantial compliance cannot be predicated  
4 upon no compliance.'") (citing and quoting *Hall v. City of Los*  
5 *Angeles*, 19 Cal.3d 198, 202 (1941)).

6 The City Defendants do not explicitly argue that Plaintiff  
7 here failed to comply with the statutory requirement under Cal.  
8 Gov. Code § 910 to name employees. Moreover, the City Defendants  
9 make no argument as to the applicable standard to apply in  
10 evaluating the sufficiency of Plaintiff's Government Tort Claim  
11 here as it applies to Officer Yee.

12 However, the statutory requirement regarding naming the  
13 involved officials is flexible; it states the employees only need  
14 be named "if known." Cal. Gov. Code § 910(e). Because Plaintiff  
15 complied with Section 910(e)'s requirement to name the known  
16 employees involved, the "substantial compliance" standard  
17 applies. The City Defendants cite no authority or cases that  
18 allow dismissal of a government tort claim for failure to name  
19 each and every individual involved. Plaintiff's failure to name  
20 Officer Yee in her Government Tort Claim is not fatal to her tort  
21 claims against Officer Yee.

22 The City Defendants' Motion to Dismiss Plaintiff's state law  
23 claims against Officer Yee on the grounds it is barred by the  
24 California Tort Claims Act is **DENIED**.

25  
26 Third, the City Defendants argue that Plaintiff's state law  
27 claims against Officer Yee should be dismissed because  
28 Plaintiff's Government Tort Claim does not address the adequacy

1 of the search warrant. As stated above, California courts employ  
2 two tests to determine the sufficiency of a claim presented to a  
3 governmental entity. *City of San Jose*, 12 Cal.3d at 456-7.  
4 Defendant Yee has identified no statutory requirement that the  
5 tort claim discuss each and every fact related to the claimant's  
6 claim. All that is required by Section 910 is "a general  
7 description of the indebtedness, obligation, injury, damage or  
8 loss incurred so far as it may be known at the time of  
9 presentation of the claim." Cal. Gov. Code § 910(d).

10 Plaintiff's claim, attached to Plaintiff's Complaint at  
11 Exhibit A, contains a page and a half long description of the  
12 events that occurred on February 19, 2004, and that gave rise to  
13 her cause of action. She does not explicitly mention the  
14 adequacy of the search warrant in that statement. However, the  
15 statutory requirement is that the injury and damage be described  
16 "so far as it may be known." The substantial compliance test  
17 applies. Plaintiff's Government Tort Claim stated facts relating  
18 to the search of a resident allegedly conducted by members of a  
19 M.A.G.E.C. unit. While Plaintiff did not explicitly refer to a  
20 search warrant, the allegations were sufficient to put the City  
21 on notice that the issues of probable cause in issuing the search  
22 warrant and justification for the search are contested.

23 The City Defendants' Motion to Dismiss Plaintiff's state law  
24 claims against Officer Yee on the grounds that Plaintiff's  
25 Government Tort Claim failed to explicitly address the adequacy  
26 of the search warrant is **DENIED**.

27  
28 Fourth, the City Defendants argue that Plaintiff failed to

1 plead the required elements of all state law causes of action.  
2 Plaintiff's state law claims are stated in a single sentence in  
3 her complaint:

4       The aforementioned actions violate Plaintiff's statutory  
5       rights, pursuant to Civil Code sections 43 and 52.1 and  
6       constitute assault, battery, false imprisonment, trespass,  
7       and intentional infliction of emotional distress.

8 (Doc. 1, Compl. ¶ 26). Plaintiff does not separate these claims  
9 into separate causes of action. Fed. R. Civ. P. 8(a)(2) requires  
10 a short and plain statement of the facts. The general principles  
11 of notice pleading require that the complaint sufficiently allege  
12 facts to enable the responding party to frame a response.  
13 Plaintiff's single sentence addressing about five or six state  
14 law causes of action fails to meet basic notice pleading  
15 standards. Plaintiff must allege each state law claim in a  
16 separately pleaded claim.

17       The City's Motion to Dismiss Plaintiff's state law claims on  
18 the grounds Plaintiff failed to meet basic notice pleading  
19 requirements is **GRANTED** with leave to amend.

20               **2. County Defendants' Motion to Dismiss Plaintiff's**  
21               **State Law Claims.**

22       The County Defendants argue that Plaintiff's state law  
23 claims against all County Defendants should be dismissed pursuant  
24 to Fed. R. Civ. P. 12(b)(6) because Plaintiff failed to file a  
25 government tort claim with Fresno County and Plaintiff's state  
26 law claims are therefore barred by the California Tort Claims  
27 Act. As discussed above, the California Tort Claims Act requires  
28 a plaintiff to file a timely tort claim with the public entity

1 before bringing suit in the proper court. Cal. Gov. Code §  
2 945.6. If a claimant fails to timely file with the public  
3 entity, courts are without jurisdiction to hear the claimant's  
4 cause of action. *Greyhound Lines*, 187 Cal. App. 3d at 487. In  
5 its opposition, Plaintiff concedes that her state law claims,  
6 against the County Defendants only, are barred by the California  
7 Tort Claims Act. (Doc. 18, Pl.'s Opp. to County 2).

8 The County Defendants' Motion to Dismiss Plaintiff's state  
9 law claims against the County Defendants on the basis that they  
10 are barred by the California Tort Claims Act is **GRANTED** with  
11 prejudice.

## 12 13 VI. CONCLUSION

14  
15 For all the reasons stated herein:

16  
17 The City Defendants' Motion to Dismiss Plaintiff's § 1983  
18 claim against the City pursuant to Fed. R. Civ. P. 12(b)(6)  
19 for failure to state a *Monell* claim is **GRANTED** with leave to  
20 amend;

21  
22 The City Defendants' request to strike punitive damages as  
23 to the § 1983 claim against the City is **MOOT**, but shall not  
24 be realleged;

25  
26 The City Defendants' Motion to Dismiss Plaintiff's § 1983  
27 claim against Officer Yee pursuant to Fed. R. Civ. P.  
28 12(b)(6) on the grounds that Plaintiff fails to meet



1 pleading standards under *Franks v. Delaware*, 438 U.S. 154  
2 (1975), is **GRANTED** with leave to amend; the City Defendants'  
3 Motion to Dismiss Plaintiff's § 1983 claim against Officers  
4 Garrison and Yee on the grounds that Plaintiff fails to  
5 plead specific acts as to each Defendant is **GRANTED** with  
6 leave to amend; the City Defendants' Motion to Dismiss  
7 Plaintiffs' § 1983 claims against Officers Garrison and Yee  
8 on all other grounds is **DENIED**;

9  
10 The City's Motion to Dismiss Plaintiff's state law claims  
11 against the City on sovereign immunity grounds is **GRANTED**  
12 with leave to amend; the City Defendants' Motion to Dismiss  
13 Plaintiff's state law claims against Officers Garrison and  
14 Yee on the grounds that Plaintiff fails to meet basic notice  
15 pleading requirements under Fed. R. Civ. P. 8(a) is **GRANTED**  
16 with leave to amend; the City Defendants' Motion to Dismiss  
17 Plaintiff's state law claims on all other grounds is **DENIED**;

18  
19 The County Defendants' Motion to Dismiss Plaintiff's state  
20 law claims pursuant to Fed. R. Civ. P. 12(b)(6) on the  
21 grounds that the claims are barred by the California Tort  
22 Claims Act is **GRANTED** with prejudice;

23  
24 The Defendants' Motions for a More Definite Statement  
25 pursuant to Fed. R. Civ. P. 12(e) regarding Plaintiff's Cal.  
26 Civ. Code. § 43 are **MOOT**.

1 SO ORDERED.

2  
3 DATED: June \_7\_, 2005.

4 /s/ OLIVER W. WANGER

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 Oliver W. Wanger  
6 UNITED STATES DISTRICT JUDGE  
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